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Role of the Friend of the Court Association in the Michigan Child Support Program

by Jeffrey Albaugh, President, Friend of the Court Association

The Friend of the Court Association (FOCA), a statewide organization comprising friend of the court (FOC) directors and staff, plays a significant role in the Michigan Child Support Program. FOCA represents its members in legislative matters and communications with the State Court Administrative Office (SCAO) [including the Friend of the Court Bureau (FOCB)], state departments and agencies [including the Office of Child Support (OCS)], and the Governor's Office. In addition to representing FOC personnel, FOCA also promotes and maintains standards for those within the domestic relations system.

The mission of FOCA is to encourage progressive legislation, resolutions, and programs that represent the common interests of children and families involved in domestic relation court cases.

In order to carry out its mission, the association appoints or recommends the appointment of FOC representatives to a multitude of committees, SCAO and OCS workgroups, task forces, and work improvement teams. The president of the association represents the FOCs on the OCS's Program Leadership Group (PLG), which advises the (OCS) and the Family Independence Agency on all matters concerning child support and Title IV-D programs. The association provides input for action transmittals issued by OCS and for administrative memoranda and policy and procedure recommendations issued by the FOCB.

The entire FOCA membership meets twice annually (in February and July) for training, issue discussion, and best-practice exchanges. The board of directors, the association's general governing body, meets monthly. The board is composed of the association president (elected by the general membership annually at the July conference), the immediate past president and eight regional directors. The board elects a vice president, secretary, and treasurer. The board has established four standing committees: legislative, conference, public education, and court rule/action transmittal review. Committee members are appointed by the president.

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The project will measure the effectiveness of audio and video technology for prisoners who access the system.

Federal Grant to Assist Prisoners with Child Support Orders

by State Court Administrative Office, Friend of the Court Bureau Staff

Recently the State Court Administrative Office (SCAO), Friend of the Court Bureau was awarded a \$100,000 federal special improvement grant to fund *The Prisoner Support Adjustment Project*.

The project will measure the effectiveness of using audio and video technology to allow prisoners to gain access to Michigan child support proceedings. It also will explore using that technology to improve access for other litigants. The project will use existing videoconferencing or telephonic technology in Michigan's trial courts and the Michigan Department of Corrections (MDOC) to allow prisoner-parent participation in support modification proceedings.

The project matches MDOC and MiCSES payer data. Those matches will be divided into three groups. Law clinics will handle a group of cases in 4-5 counties, and those prisoners will be given the opportunity to be represented in their modification proceedings. The next group of cases will receive information on modifying their own support obligations. Friend of the Court offices will receive a list of all remaining cases for the office to incorporate into their normal review and modification processes.

Project employees will identify prisoners with child support cases and file motions to both modify their support orders during imprisonment and to modify them again upon the prisoners' release. Modification of a prisoner's obligation does not always mean getting a zero support order, it means getting an appropriate order based on the prisoner's circumstances. The project also encourages setting prospective support and medical orders that become effective shortly after the payer's release.

The success of this program is contingent upon partnerships between the courts, the MDOC, the Michigan Office of Child Support, the SCAO, and the Michigan State University and Wayne State University Law School Clinics.

The principle objectives of this project:

- Released prisoners will not find themselves burdened with impossible arrearages and will be more likely to pay future child support and involve themselves in their children's lives.
- Eliminate the barriers to court access and case processing for prisoners needing a reduction in their support obligations.
- Significantly improve collection percentages (IV-D program performance improvement).
- Improve customer service to an under-served population (incarcerated, indigent parents).

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FY 2005-2009 Strategic Plan for the National Child Support Enforcement Program

by State Court Administrative Office, Friend of the Court Bureau Staff

The National Child Support Enforcement Program is a federal/state/tribal partnership that was established to enhance the well-being of children by assuring that children's financial needs are met. The Program helps state, local, and tribal child support agencies to locate non-custodial parents, establish paternity when necessary, establish orders for child support, and collect child support payments.

The Federal Office of Child Support Enforcement (OCSE) provides funding and services to the states, some tribes, and some other jurisdictions to ensure that child support payments are made. Recently OCSE released its strategic plan for 2005-2009. The strategic plan reflects 10 years of hard work by many child support professionals across the country. It indicates the direction in which the OCSE would like to see the National Child Support Program move in the next five years.

This new strategic plan emphasizes that:

- Child support must be a reliable source of income for families.
- Securing medical coverage for children is important enough to be a stand-alone goal and not merely a subset of other goals.
- We must pursue early intervention measures to avoid the build-up of uncollectible arrearages.

The FY 2005-2009 goals set forth in the strategic plan are that all children in IV-D cases have:

- Parentage Established.
- Support orders.
- Medical coverage.
- Financial support from their parents.

OCSE also has outlined its strategies for accomplishing these goals:

- Emphasize prevention and early intervention in child support matters.
- Simplify distribution of collections.
- Pay families promptly and first.
- Ensure that health care coverage for children is a primary consideration.
- Eliminate barriers associated with multi-state cases, and establish protocols for the sharing of information between agencies and between states.
- Provide more transitional help to families who have recently stopped receiving TANF.
- Customize the approach to customer service in each case.
- Develop more effective locator, service of process, and paternity/support establishment tools.
- Expand and improve enforcement tools.

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New strategic plan emphasizes that "child support must be a reliable source of income for families."

2005 Access and Visitation Grants Awarded

by State Court Administrative Office, Friend of the Court Bureau Staff

As authorized by the **Personal Responsibility and Work Opportunity Reconciliation Act of 1996** (PRWORA), the federal Office of Child Support Enforcement (OCSE) has provided grants to states to pilot and administer programs that support and facilitate non-custodial parents' access to, and visitation with, their children. The Family Independence Agency was awarded the grant to be administered by the State Court Administrative Office (SCAO). The grant money will be distributed to county friend of the court offices (FOCs).

In Michigan, the **Access and Visitation Grant** involves a competitive application process. All FOCs were notified that they could apply for a FY 2005 Grant. Applicants were encouraged to develop innovative programs that target populations not being assisted by currently mandated services. If awarded a grant, the local government must provide ten percent matching funds for its program and submit program status reports to the SCAO. Grant contracts also require the recipients to develop other funding sources to replace the grants. That will allow new grant recipients to be chosen in the future.

Twenty-one Michigan FOC offices were awarded a total of \$205,792 for FY 2005 to continue or establish access and visitation programs.

The following counties were awarded grants to continue existing programs:

Antrim, Grand Traverse, and Leelanau Counties received funding to continue their supervised parenting time program and their educational and support program for parents involved in paternity cases.

Baraga, Houghton, and Keweenaw Counties received funding to continue their supervised parenting time, parenting time exchange, and parent education programs.

Kalamazoo, Allegan, Barry, Calhoun, and Van Buren Counties received funding to continue a supervised parenting time program and other services provided by Kalamazoo Family and Children Inc. NOTE: In FY 2004, these five counties with separate FOC offices joined together to establish one access and visitation program.

Livingston County received funding to continue its supervised parenting time, exchange, and parent education programs.

Marquette County received funding to continue its supervised parenting time and counseling programs.

Muskegon County received funding to continue its program to increase non-custodial fathers' access to their children through group and individual parenting time conferences.

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Cases in Brief

by State Court Administrative Office, Friend of the Court Bureau Staff

Harvey v Harvey, 470 Mich 186 (6/9/04)

SUMMARY: Even if the parties voluntarily submit a custody dispute for “binding” arbitration by an outside arbitrator or for a “binding” decision by domestic relations referee, the Child Custody Act requires that a judge make the final custody decision and that the judge base that decision on the “best interests of the child” criteria listed in MCL 722.23.

FACTS AND RULING: The divorcing parents of two children agreed (by a consent order) that a domestic relations referee would decide their custody dispute and that the circuit court would enter an order based on the referee’s decision — without reviewing the merits of that decision. The referee heard testimony and recommended that the court award custody to the defendant. Notwithstanding the earlier agreement and consent order, the plaintiff objected. The circuit court enforced the parties’ agreement and entered the recommended order, but the Court of Appeals (COA) reversed. *Harvey v Harvey*, 257 Mich App 278 (2003). The Supreme Court upheld the reversal, but its reasoning differed from the COA’s.

The Supreme Court first noted that both the Domestic Relations Arbitration Act, MCL 600.5070 *et. seq.*, and the Friend of the Court Act, MCL 552.501 *et. seq.*, provide for alternative dispute resolution (ADR) methods. But the Court went on to hold that neither of those laws permits the parties to waive the circuit court’s duty under the Child Custody Act, MCL 722.21 *et. seq.*, to make the final custody decision itself based on the “best interests of the child.” MCL 722.23. See also MCL 722.25(1). Thus, even when the parties have stipulated to binding ADR, either party may obtain a *de novo* hearing in circuit court by objecting to the entry of an order based on the ADR decision. Further, even if the parties agree on who should have custody of their children, the court still must verify that the arrangement comports with the child’s best interests.

People v Adams, 262 Mich App 89 (2004) [no further appeal].

SUMMARY: As amended by 1999 PA 152, the felony offense of failing to support a spouse or child as required by a court order, MCL 750.165, is a strict liability offense. That means that “inability to pay” is not a defense and that evidence of the defendant’s ability or inability to pay is irrelevant and inadmissible.

FACTS AND RULING: The parties were divorced in 1991. The judgment required the defendant to pay monthly child support, but he failed to pay as ordered.

The Attorney General (AG) charged the defendant with felony non-support under MCL 750.165. The AG also filed a motion to exclude all evidence supporting the anticipated defense theory that the defendant lacked the financial ability to pay. The circuit court denied the AG’s motion, but the Court of Appeals has reversed in a published opinion.

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A final custody decision must be made by the judge based on the best interests of the child even when parties voluntarily submit to binding arbitration.

Capitol Corner

by State Court Administrative Office, Friend of the Court Bureau Staff

The following legislation has been introduced in the House or the Senate since the July 2004 Pundit was published. These bills and other legislation may be viewed at: <http://www.michiganlegislature.org/>.

Senate Bill 1378 would amend one section of the Child Custody Act [MCL 722.26c] to allow a third party to bring an action for custody if the child's parents are incapacitated. The bill provides a special definition of incapacitated. This bill was introduced on September 9, 2004, and referred to the Judiciary Committee.

Senate Bill 1415 would amend two sections of the Support and Parenting Time Enforcement Act [MCL 552.601 to 552.650]. The bill requires the friend of the court to take appropriate action to seek modification of an income withholding order or judgment when the child support payer is called to emergency military service and, as a result earns less income. Modification of the income withholding would be retroactive to the date the payer reported for service. This bill was introduced on September 21, 2004, and referred to the Committee on Family and Human Services.

Senate Bill 1447 would amend several sections of the Support and Parenting Time Enforcement Act [MCL 552.625a-.625i]. The bill would allow the IV-D agency to place a lien against a child support payer's lawsuit settlement, civil judgment, worker's compensation order settlement, voluntary payment or an arbitration award. The bill also lists some assets that are not subject to lien. This bill was introduced on October 6, 2004, and referred to the Committee on Families and Human Services.

Senate Bill 1448 would amend two sections the Support and Parenting Time Enforcement Act [MCL 552.601 to 552.650]. The bill would require the IV-D agency to notify the child support lien network of each payer who has an arrearage in the amount of two or more months. This bill was introduced on October 6, 2004, and referred to Committee on Families and Human Services.

Senate Bill 1449 would add a new Section 418 to the Insurance Code [MCL 500.418 et.seq.]. It would authorize an insurance company to voluntarily cooperate with the IV-D agency by identifying child support payers (with arrearages) who are to receive settlements or awards. This bill was introduced on October 6, 2004, and referred to Committee on Families and Human Services.

Senate Bill 1550 would add a section to the Estates and Protected Individual Code [MCL 700.3705] to require the personal representative of an estate to provide the names of the heirs and devisees of an estate to the friend of the court. This bill was introduced on October 6, 2004, and referred to the Committee on Families and Human Services.

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Capitol Corner, continued from page 6

Senate Bill 1451 would amend a section of the Worker's Disability Compensation Act [MCL 418.230] by requiring the Worker's Compensation Bureau to provide the IV-D agency with the names of those individuals who have filed claims and the names of their employers' insurance carriers. This bill was introduced on October 6, 2004, and referred to Committee on Families and Human Services.

For additional information regarding 2004 Public Acts affecting friend of the courts and circuit courts please go to: <http://courts.michigan.gov/scao/features/Mailings/2004/10-01-04/2004FOCLegislation.pdf>

Role of the Friend of the Court Association, continued from page 1

The FOC of each circuit/county is eligible for membership in the association. Currently 64 of 65 FOC directors are members. The staff of FOC offices are eligible for associate membership.

The Current FOCA Officers and Directors are:

President: Jeff Albaugh, Calhoun FOC

Vice President: Susan Thorman, Shiawassee FOC

Secretary: Mary Lou Burns, Tuscola FOC

Treasurer: David Huntley, Alpena/Montmorency FOC

Immediate Past President: Michael J. Day, Allegan FOC

Region 1 Director: Constance Osier, Delta FOC

Pro Tem: Carolyn Hanson, Marquette FOC

Region 2 Director: Roman Gruz, Missaukee/Wexford FOC

Pro Tem: Maurine Watts, Emmet County FOC

Region 3 Director: David Huntley, Alpena/Montmorency FOC

Pro Tem: Charlene K. Baker, Alcona/Arenac/Iosco & Oscoda FOC

Region 4 Director: Barbara Geno, Newaygo FOC

Pro Tem: Suzanne Hoseth, Ionia FOC

Region 5 Director: Cyndi J. Hunt, Mecosta/Osceola FOC

Pro Tem: David Myers, Sanilac FOC

Region 6 Director: Roland Fancher, Kalamazoo FOC

Pro Tem: Andy Crisenbery, Jackson FOC

Region 7 Director: Susan Thorman, Shiawassee FOC

Pro Tem: Emil Joseph, Lapeer FOC

Region 8 Director: Judah Garber, Washtenaw FOC

Pro Tem: Joseph Hudson, Monroe FOC

FOCA members are dedicated, hard-working FOC directors who have a strong desire for the Michigan Child Support Program to be successful. To accomplish this goal, FOCA will continue to work closely with the other program stakeholders to meet challenges facing the program.

Federal Grant to Assist Prisoners, continued from page 2

In summary: A prisoner with an unreasonable support obligation usually means uncollectible current support and an arrearage which counts against a county for the purpose of incentives. A case with an appropriate support amount and a small arrearage repayment amount improves a county's current support and arrearage collection percentages for the purpose of incentives. SCAO's *Prisoner Support Adjustment Project* expects to establish the technological means to improve access to legal proceedings, increase the number of prisoner cases actually collecting current child support, and analyze possible administrative changes to improve court access for non-prisoner litigants.

FY 2005-2009 Strategic Plan, continued from page 3

OCSE has announced this vision for the future of the child support program: "Children can count on their parents for the financial, medical, and emotional support they need to be healthy and successful." Implementing that vision will require that children come first and that parents meet their financial and emotional responsibilities to their children. Further, child support programs must assist those parents who are struggling to meet the needs of their children. OCSE calls on all child support agencies across the country to help achieve the goals set forth in the new strategic plan.

Cases in Brief, continued from page 5

The COA acknowledged that another COA panel had interpreted an earlier version of the statute as requiring proof of fault on the defendant's part. But the COA ruled that the current statute, as amended by 1999 PA 152, makes felony non-support a strict liability offense. That means that the prosecution needs to prove only that the defendant failed to pay as ordered. It also means that evidence of the defendant's financial circumstances is not relevant to any issue in the criminal case and is, therefore, inadmissible.

2005 Access and Visitation Grants Awarded, continued from page 4

Oakland County received funding to continue its supervised parenting time, exchange, parent education, and counseling programs.

Oceana County received funding to continue a supervised parenting time program, a parent education program, and to provide a parenting time monitor.

The following counties were awarded grants to establish new access and visitation programs:

Chippewa County received funding to establish a systematic training and effective parenting program, and to provide counseling services.

Ingham County received a grant to fund a supervised parenting time program. The program will utilize social work students to serve as supervisors for parenting time.

Ionia County received funding to establish a Parenting Time Coordination Team. The team would be made up of an experienced family law attorney and an experienced family therapist. The team would assist the court regarding parenting time decisions.

Manistee and Benzie Counties received funding to establish the “Growing New Families Program”. This program will provide a supervised parenting time program and parenting skills classes

A county may use its grant to fund mediation, counseling, education, development of parenting plans, parenting time enforcement, or development of guidelines for parenting time and alternative custody arrangements. Many of the counties that received funding will provide several of these services. Of those counties that were awarded funding, 18 will provide supervised parenting time services, 11 will provide parenting education classes, and 7 will provide parent exchange programs.

Last year, 3,723 parents received services from programs funded with an Access and Visitation Grant. Of those parents who received services, 896 saw their parenting time increase.

FYI

by State Court Administrative Office, Friend of the Court Bureau Staff

Child Support Formula Manual Effective Oct. 1, 2004

The 2004 Michigan Child Support Manual published by the State Court Administrative Office became effective October 1, 2004, and can be found at: <http://courts.michigan.gov/scao/resources/publications/manuals/focb/2004MCSFmanual.pdf>

Public Acts, effective Oct. 1, 2004

Public Act 203 establishes the child support bench warrant fund in the Department of Treasury. The Office of Child Support (OCS) will use money in the fund to contract with law enforcement agencies to serve child support bench warrants. The fund receives \$10 out of a fee that is assessed on every judgment or order entered in a child custody, parenting time, or support case.

Public Act 204 and Public Act 253 allocates between the parents the birth and confinement expenses. The court must allocate confinement and birth expenses between the parents in paternity cases based on their ability to pay and on any other relevant factor. Expenses are to be allocated in the same manner as other uninsured medical expenses are allocated between the parents.

Public Act 205 creates judgment entry fees. Prior to Public Act 205, a person seeking entry of a divorce judgment was required to pay a fee of \$30, \$50, or \$70 depending on the type of service the friend of the court provided. Those fees have been changed. The fee is \$80 when the order or judgment involves custody or parenting time and \$40 when the order or judgment involves support only. Under Public Act 205, the fee is assessed on all cases, not just divorce cases. The fee may be waived in certain circumstances.

Public Act 209 allows child support to start only from the date the paternity claim was filed unless certain conditions are present. Support may not be awarded in a paternity case for the period before the complaint was filed unless the defendant was avoiding service, threatened or coerced the complainant not to file, or otherwise delayed the imposition of a support obligation.

Public Act 210 provides that each county may establish a friend of the court citizen advisory committee (prior to Public Act 210 the law required counties to establish a citizen advisory committee). Public Act 210 also set forth that the court may hold a de novo hearing based entirely or in part on the record of a domestic relations referee's previous hearing.

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State Court Administrative Office Administrative Memorandums

The following recently released SCAO Administrative Memorandums impact the friend of the courts:

Abatement Deviation Policy (released August 23, 2004):

<http://courts.michigan.gov/scao/resources/other/scaoadm/2004/2004-11.pdf>

Medical Policy for Friends of the Court (released October 1, 2004):

<http://courts.michigan.gov/scao/resources/other/scaoadm/2004/2004-14.pdf>

Friend of the Court Guidelines for Determining, Changing, or Suppressing Addresses of Parties and Nonparties (released October 8, 2004):

<http://courts.michigan.gov/scao/resources/other/scaoadm/2004/2004-15.pdf>

Opting Out of Friend of the Court Services (released October 12, 2004):

<http://courts.michigan.gov/scao/resources/other/scaoadm/2004/2004-16.pdf>